

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
Implementation of Section 621(a)(1) of)	
the Cable Communications Policy Act of 1984)	MB Docket No. 05-311
as amended by the Cable Television Consumer)	
Protection and Competition Act of 1992)	

COMMENTS OF SALT LAKE CITY, UTAH

These Comments are filed by Salt Lake City, Utah (sometimes referred to herein as the "City"), in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, Salt Lake City believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

In Salt Lake City, franchises such as a cable franchise must be issued by ordinance, adopted by the City Council. In addition, however, the ordinance adopts by reference the terms of a separate franchise agreement, negotiated under the direction of the Mayor. The cable ordinance and cable franchise agreement are collectively referred to below as the "franchise."

Cable Franchising in Our Community

Community Information

Salt Lake City is a city with a population of approximately 182,000. Our franchised cable providers are Comcast and Qwest Broadband Services, Inc. Salt Lake City negotiated and issued its first cable franchise in the late 1960's.

Our Current Comcast Franchise

Our current Comcast franchise was issued in 1989, and has recently expired. Salt Lake City and Comcast are currently negotiating a franchise renewal. Comcast has agreed to continue operating under the terms of the 1989 franchise pending renewal of the franchise.

The franchise requires Comcast to pay an annual franchise fee to the City in the amount of 5% of Comcast's gross revenues.

The City requires Comcast to provide capacity for public, educational, and/or governmental ("PEG") access channels on the cable system. We currently have one channel devoted to governmental access. The franchise requires Comcast to provide at least one additional channel devoted to educational and public access. However, a public access/educational channel is not currently in operation in our community.

Our franchise does not specify the manner of financing PEG access channels. However, Comcast has offered to assist the City in assessing community interest in such programming, and to fund the capital expenses of offering such programming through a subscriber surcharge. The franchise also provides that Comcast shall provide a microwave receiver and the necessary connections to receive transmissions from the City for PEG channels.

Our franchise provides that in case the mayor or the mayor's designee declares a state of emergency or disaster, Comcast shall, upon request of the City, make available to the City a system audio override through which emergency information and instructions may be given during the emergency or disaster period. These emergency alert requirements provide an important avenue of communication with our residents in the event of an emergency.

Our franchise contains the following customer service obligations, by which we are able to help ensure that the cable operator is treating our residents in accordance with federal standards and the terms it agreed to in its franchise:

- A. All calls to the general information number must be answered by an operator or a device identifying the cable operator.
- B. With certain exceptions, eighty-five percent of all customer calls must be attended within three minutes by a representative of the cable operator or a device capable of problem resolution.
- C. The rate of abandoned calls must be less than fifteen percent.

D. Ninety-five percent of all customer installations must be completed within fifteen working days (unless the customer requests a later date).

E. Ninety-five percent of all repair and installation appointments must be met by Comcast on the appointed date and within the appointed four-hour block of time, unless satisfactory arrangements are otherwise made with the subscriber.

F. Comcast must provide the City with the information required to monitor these standards on a monthly basis.

In order to ensure that our residents have access to cable service, Comcast is subject to the following build requirements:

A. Comcast must file with the City each year with its annual report a five-year expansion plan indicating Comcast's present plan for construction, rebuilding, or overbuilding the service area, including target dates for completion.

B. Whenever Comcast receives a request for service from at least fifteen or more subscribers within one thousand three hundred twenty cable-bearing strand feet (one-quarter cable mile) of its trunk cable, it shall extend its cable communications system to such subscribers at its normal connection fee; provided that such extension is technically feasible, will not adversely affect the operation of the cable communications system, and Comcast is able to reasonably obtain all easements which are necessary to extend service relating thereto. The extension of services must be completed within sixty days of the date of request.

3. No subscriber may be refused service arbitrarily. However, for unusual circumstances, such as a subscriber's request to locate his cable drop underground, existence of more than one hundred fifty feet of distance from distribution cable to connection of service to subscribers, or a density of less than fifteen subscribers per one thousand three hundred twenty cable-bearing strand feet of trunk or distribution cable, cable service or other service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by Comcast and subscribers in the area in which cable service may be expanded, Comcast must contribute an amount equal to the construction and other costs, multiplied by a fraction whose numerator equals the actual number of potential subscribers per one thousand three hundred twenty cable-bearing strand feet of its trunks or distribution cable, and whose denominator equals fifteen subscribers. The remainder of the construction and other costs will be charged to the potential subscribers when or if they subscribe on a pro rata basis. Comcast may require that the payment of the capital contribution in aid of construction borne by such potential subscribers be

paid in advance. The subscriber must be given a written estimate of such payment prior to the beginning of construction, and shall in no event be required to pay more than five percent over this estimate. In lieu of directly charging for construction costs, Comcast may implement alternative pricing structures for services rendered which reflect disproportionate construction and related costs incidental to serving low density or other capital intensive areas.

Comcast is subject to the following insurance requirements:

1. Comcast must maintain in full force and effect, at its own cost and expense, during the term of the franchise, general comprehensive liability insurance in the amount of two hundred fifty thousand dollars for bodily injuries, (including accidental death) to any one person, and subject to the same limit for each person in amount not less than five hundred thousand dollars on account of any one occurrence, and property damage liability insurance in an amount not less than one hundred thousand dollars resulting from any one occurrence. Said insurance must designate the City as an additional named insured. Such insurance must be noncancellable except upon sixty days' prior written notice to the City. In the event that potential liability for the City is increased by any change in the Utah Governmental Immunity Act, Comcast must modify the required insurance amounts accordingly upon thirty days' notice from the City.

Comcast is also required to provide \$25,000 cash security, or other equivalent security.

The cable franchise grants Comcast access to the public rights of way and compatible easements for the purpose of providing cable television service. Apart from the franchise, Comcast is required to obtain a permit from the appropriate municipal office as well before it may access the public rights of way. The fees associated with such additional permits are set by ordinance, and are designed to recoup the costs to the City of administering the permit requirements.

The franchise provides for the following enforcement mechanisms by which we are able to ensure that Comcast is abiding by its agreement:

- A. The City may impose a civil penalty on Comcast up to the following amounts per day or part thereof that the following violations occur or continue:

1. Two hundred dollars for any failure to complete system construction in accordance with Comcast's construction obligations;
2. One hundred dollars for any failure to provide certain data, documents, reports or information to the City during a system review;

3. Seventy-five dollars where the penalty is not otherwise specified.

B. In addition, the City may:

1. Foreclose on all or any part of any security provided to the City; provided, however, the foreclosure shall only be in such a manner and in such amount as the City reasonably determines is necessary to remedy the default;

2. Commence an action at law for monetary damages or seek other equitable relief;

3. Subject to applicable federal, state and local law, in the case of a substantial default under certain provisions of the franchise, revoke the franchise agreement;

4. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or

5. Exercise any right or remedy available at law or in equity.

Our Current Qwest Broadband Services, Inc. Franchise

Our current Qwest franchise became effective on February 3, 2006, and expires on November 1, 2020.

Our franchise requires Qwest to pay an annual franchise fee to the City in the amount of 5% of Qwest's gross revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act.

We require Qwest to provide one access channel each for public, educational, and governmental ("PEG") programming on the cable system. We currently have one channel devoted to government access, and no active channels devoted to educational or public access.

The franchise requires that our PEG channels be supported by Qwest through the imposition and collection of a monthly subscriber surcharge of up to 50 cents per month. In addition, Qwest must provide and maintain at its expense the lines and facilities necessary for it to receive PEG Channel programming for simultaneous distribution on the cable system. This includes Qwest providing the lines, modulators and facilities (such as two-way activated drops) necessary to provide live program origination capability from the studios (or other similar fixed signal origination point) for the PEG Channels (but not video production or playback equipment).

Our franchise contains a requirement for an emergency alert system ("EAS"). The cable system must include an EAS as prescribed by the FCC and the Cable Television Consumer Protection and Competition Act of 1992, as amended. Qwest is required to transmit on such EAS Federal, State and local EAS messages. The cable system must also include an all channel alert system acceptable to City for City to use so as to allow audio announcements and video text crawls by the City on all subscriber channels. The audio announcements must be capable of automatically overriding (i.e. -- blank) all programming otherwise being provided on such channels and the video text crawl must be superimposed on existing programming. The City may use either the audio announcement or the video text crawl, at its option. These emergency alert requirements provide an important avenue of communication with our residents in the event of an emergency.

Our franchise contains extensive customer service obligations, by which we are able to help ensure that the cable operator is treating our residents in accordance with federal standards and the terms it agreed to in its franchise. These obligations include adherence to FCC Customer Service Rules, specification of business hours, a requirement for a 24/7 live operator telephone answering service, no "negative option" marketing, and free service at each City building, each fire and police station, each library and all public schools. Qwest is prohibited from denying access, or otherwise discriminating among potential subscribers, based on race, color, creed, religion, ancestry, national origin, gender, sexual orientation, disability, age, familial status, marital status, or status with regard to public assistance. Also, Qwest may not discriminate against any group of actual or potential subscribers on access to or the rates, terms and conditions of cable services because of the income level or other demographics of the local area in which such group may be located. Qwest must provide programming lockout services to subscribers. Subscribers have the option of refusing pay per view service, or having such service only by using a security number. Qwest must maintain a log of customer complaints. The franchise spells out the manner for dealing with late or delinquent accounts. The franchise includes provisions dealing with subscriber privacy. The cable system must meet FCC technical standards, and the franchise includes provisions for periodic testing and reporting. Spanish speaking representatives must be available when calling customer service.

Our franchise contains the following build out requirements:

"2.3.2 Whenever [Qwest] receives a request for service from a potential Subscriber within the Authorized Area and where there are at least 250 dwelling units located within Four Thousand (4,000) feet of a potential Remote Terminal site which do not have cable service available from another franchised cable operator, [Qwest] shall extend its Cable System to such potential Subscriber(s) at no cost to said potential Subscriber(s); provided that the provisions of this Section

2.3.2 shall only apply after the first date by which Company is providing Cable Service to more than fifty percent (50%) of all Subscribers receiving Cable Service from both Company and any other provider(s) of Cable Service within Municipality.

2.3.3 Any potential Subscriber located outside the area where the Cable System is extended free of charge under the preceding provisions may obtain service by making a contribution in aid of construction to extend the Cable System to a point at which such potential Subscriber is entitled to service without an additional charge for line extensions. Annually during the five-year period commencing at the completion of such a Subscriber-funded line extension, as new Subscribers are added to such line extension, Company shall collect funds from such new Subscribers and refunds shall be made by Company to Subscribers who made such contribution in aid of construction. The amount of the collection and refund shall be determined by applying the provisions of this Section 2.3 to compare what the contribution (if any) would have been with the new Subscribers compared to the contribution actually made, with the difference reduced to zero at the rate of twenty percent (20%) per year over the five (5) years. Examples of the application of this Section are set forth in Exhibit D.

2.3.4 [Qwest] shall investigate and respond to Municipality in writing whether areas within Municipality do/do not meet the standard of the preceding subsections.

2.3.5 When [Qwest] meets the threshold in Section 2.3.2, the parties will negotiate a reasonable timeframe to complete construction to all Subscribers then and thereafter meeting the density standards described in Section 2.3.2, provided that in no event shall such construction schedule exceed five (5) years."

In order to ensure that our residents have access to current telecommunications technologies, our franchise requires that Qwest shall use its best efforts to incorporate technological advances into its equipment and service when such advances have been shown to be technically and economically feasible, safe and beneficial. Qwest shall, in the regular course of its business, review technological advances that have occurred in the cable industry.

Our franchise does not contain "most-favored nation" language. However, it does require equal treatment of cable providers in certain instances. For example, Qwest has agreed to continue paying a gross revenue franchise fee, notwithstanding any change in federal law, as long as the other provider pays the same fee.

Under the franchise, Qwest is required to provide a \$50,000 performance bond. Qwest is also required to provide CGL insurance coverage at \$2,000,000 per occurrence, \$5,000,000 aggregate, with a \$5,000,000 products completed operations aggregate.

Qwest is required to maintain a \$500,000 environmental liability policy, comprehensive auto coverage with the same limits as the CGL policy, and broadcasters' liability coverage with minimum limits of \$5,000,000.

The cable franchise grants Qwest access to the public rights of way and compatible easements for the purpose of providing cable television service. Apart from the franchise, Qwest is required to obtain a permit from the appropriate municipal office as well before it may access the public rights of way. The fees associated with such additional permits are set by ordinance, and are designed to recoup the costs to the City of administering the permit requirements.

In the event of default by Qwest, Qwest has 30 days to cure any defaults related to payment, and 60 days to cure other types of default, which 60 days may be extended under certain circumstances. Remedies on the part of the City include the right to terminate the franchise, to bring legal action for monetary relief, or to seek injunctive relief or specific performance.

The franchise also provides for liquidated damages in certain cases, in the amount of \$250 or \$500 per day, depending on the nature of the breach.

The Franchising Process

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

Our Qwest franchise contains the following three provisions dealing with changes in law which affect the rights or responsibilities of either party:

"14.14 Binding Agreement. The parties agree that this Agreement complies with State and Federal law as of the Effective Date. The parties agree to be bound by the provisions hereof during the full term hereof, except that the parties also agree to recognize and be bound by any change in any State or Federal law, even if such law materially affects the terms of this Agreement; provided, however, that, notwithstanding any change in State or Federal law, or in the event of a judicial or administrative ruling, action or interpretation of or with respect to any future or existing law, which in either case would have the effect of limiting, qualifying, or

excusing payment by [Qwest] of the Franchise Fee provided for in Article 7 hereof, in strict accordance with the terms hereof, [Qwest] shall continue to pay such Franchise Fee in accordance herewith, during the full term of this Agreement, so long as every other Cable Operator in the Municipality is paying an equal franchise fee for the provision of Cable Service in the Municipality. To the extent any other Cable Operator in the Municipality lawfully discontinues the payment of Franchise Fees in accordance with the terms of their respective franchise agreements or a change in State or Federal law, [Qwest] shall be entitled to discontinue payment as well.

...

14.16 Non-Waiver, Preemption Nothing in this Agreement shall be deemed an agreement by either party as to any claimed preemptive effect, nor shall it be deemed a waiver of either party's right to challenge any claimed preemptive effect, of any subsequent Federal law, regulation, or court ruling alleged to conflict with, alter, limit, or replace terms, requirements or conditions of this Agreement in effect as of the Effective Date.

14.17 Reserved Rights Municipality reserves all rights and powers under (i) its police powers and (ii) powers conferred by Federal, State or local law of which Municipality may not legally and contractually divest itself. In particular, Municipality reserves the right to alter, amend or repeal its municipal code and cable ordinance as it determines shall be conducive to the health, safety and welfare of the public, or otherwise in the public interest; provided that any such alteration, amendment or repeal shall be applicable to all similarly situated franchisees of the City, in such a manner and to such an extent so as not to place [Qwest] at a material competitive disadvantage. Municipality agrees that by accepting this Agreement, [Qwest] has not waived its right to object to the application to it of actions by Municipality pursuant to its reserved rights or police powers."

Competitive Cable Systems

Historically, Salt Lake City has been served by only one cable television operator: Comcast and its predecessor. In mid September, 2005, the incumbent telephone local exchange carrier, Qwest, contacted Salt Lake City and requested a cable television franchise. This began a very intense period of negotiation and drafting, which culminated in a franchise being awarded by the City Council on November 17, 2005. The negotiations, although sometimes difficult, were marked by courtesy and professionalism on both sides. We wish to emphasize that the entire process, from first contact to adoption of the franchise ordinance, was completed within a period of no more than two and one-half months. We found Qwest to be generally very reasonable, and flexible

when it helped move negotiations along. For example, Qwest initially proposed a very simple franchise agreement negotiated with a smaller Utah city. We quickly determined this form would not suit our needs, and proposed a much more comprehensive form provided by outside legal counsel. Qwest agreed to use our form.

By far the most difficult issue we had to deal with was that of build out. In fairness to Qwest, they made it very clear from day one that they would not commit to overbuild the entire City. Nevertheless, the City put forth various compromise proposals, and ultimately succeeded in achieving some level of protection in this regard for our residents. We encountered strong opposition from the incumbent provider, who made their wishes known to the City Council both in writing and at a public hearing. Ultimately, the City decided as a policy matter to award Qwest a franchise with limited build out requirements, in the interest of promoting much needed competition in the City.

Salt Lake City is very jealous of its franchising authority. Our recent "success story" with Qwest demonstrates that the process works, without outside intervention at the Federal level. While we ultimately agreed to a compromise on the build out issue, we might easily have made a different decision. We knew that was our choice. In the end, our concessions on this score were at least partially offset by obtaining concessions from Qwest in other areas. It is crucial that cities continue to be allowed to weigh all the pros and cons, and make decisions that are right for their communities in arms length negotiations.

Conclusions

The local cable franchising process functions well in Salt Lake City. As the above information indicates, we are experienced at working with cable providers to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.

Finally, local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

Salt Lake City therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,

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